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General Assembly

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25 June 2001

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Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption
Vienna, 30 July-3 August 2001

Annotated provisional agenda and proposed organization of work

1. Opening of the Meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Preparation of draft terms of reference for the negotiation of an international legal instrument against corruption.
5. Conclusions and recommendations and adoption of the report of the Meeting.

Annotations

1. Opening of the Meeting

The Meeting will be convened on Monday, 30 July 2001, at 10 a.m.

2. Election of officers

In accordance with established practice, the Meeting may wish to elect five officers, a Chairman, three Vice-Chairmen and a Rapporteur.

Based on previous practice, and taking into account General Assembly decision 33/417 of 14 December 1978 on the organization of the work of United Nations bodies, regional groups are urged to start consultations on the nomination of candidates to fill these elective posts well in advance of the Meeting, with a view to agreeing on a slate of candidates equal to the number of positions to be filled, thus allowing all officers of the Meeting to be elected by acclamation and dispensing with the requirement of a secret ballot.

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3. Adoption of the agenda and organization of work

(a) Adoption of the agenda

The provisional agenda for the Meeting was prepared in accordance with General Assembly resolutions 55/61 of 4 December and 55/188 of 20 December 2000.

(b) Proposed organization of work of the Meeting

The proposed organization of work of the first Meeting of the Intergovernmental Open-Ended Expert Group, which is contained in the annex, has been prepared in accordance with the above-mentioned resolutions. It is intended to facilitate consideration of the agenda items within the time and in accordance with the conference services available.

The resources available to the Meeting permit the holding of two plenary meetings per day with full interpretation in the official languages of the United Nations.

4. Preparation of draft terms of reference for the negotiation of an international legal instrument against corruption

In its resolution 55/61, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable; decided to begin the elaboration of such an instrument in Vienna at the headquarters of the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention; requested the Secretary-General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, at its tenth session, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

In the same resolution, the Assembly requested the Secretary-General to convene, upon completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the related protocols, an inter-governmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.

In its resolution 55/188, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an inter-governmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the repatriation of such funds to the countries of origin.

The Commission on Crime Prevention and Criminal Justice, at its tenth session, recommended to the Economic and Social Council the adoption of a draft resolution entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption,

including the laundering of funds, and in returning such funds". In that draft resolution, the Council would request the intergovernmental open-ended expert group referred to in General Assembly resolution 55/61 to consider, within the context of its mandates, the following issues, inter alia, as possible items to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contribute to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering; and (d) determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

Documentation

Report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1 and Add.1)

Report of the Commission on Crime Prevention and Criminal Justice on its tenth session (E/2001/30)

Background documents

Inter-American Convention against Corruption (E/1996/99)

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organisation for Economic Cooperation and Development on 21 November 1997

Convention on the fight against corruption involving officials of the European Communities or officials of member States of the European Union adopted by the Council of the European Union on 3 December 1998

Joint Action on Corruption in the private sector adopted by the Council of the European Union on 22 December 1998

Criminal Law Convention on Corruption adopted by the Committee of Ministers of the Council of Europe on 27 January 1999

Civil Law Convention on Corruption adopted by the Committee of Ministers of the Council of Europe on 9 September 1999

5. Conclusions and recommendations and adoption of the report of the meeting

In its resolution 55/61, the General Assembly requested the Intergovernmental Open-Ended Expert Group to submit the draft terms of reference for the negotiation of the future legal instrument, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, to the Assembly at its fifty-sixth session for adoption, and decided to establish an ad hoc committee for the negotiation of such an instrument to start its work in Vienna as soon as the draft

terms of reference for such negotiation had been adopted. In its resolution 55/188, the Assembly invited the expert group to examine the question of illegally transferred funds and the repatriation of such funds to the countries of origin.

The Meeting is to adopt a report, the draft of which will be prepared by the Rapporteur. The Intergovernmental Open-Ended Expert Group may wish to consider submitting the draft terms of reference to the General Assembly by means of a draft resolution for consideration and action at its fifty-sixth session.

The resumed tenth session of the Commission on Crime Prevention and Criminal Justice is to be held in Vienna on 6 and 7 September 2001.

Annex

Proposed organization of work of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, to be held in Vienna from 30 July to 3 August 2001

Date	*Time*	*Item*	
Monday, 30 July	10 a.m. to 1 p.m.	1	Opening of the Meeting
		2	Election of officers
		3	Adoption of the agenda and organization of work
		4	Preparation of draft terms of reference for the negotiation of an international legal instrument against corruption
	3 to 6 p.m.	4	Continuation of the discussion
Tuesday, 31 July, to Thursday, 2 August	10 a.m. to 1 p.m. and 3 to 6 p.m.	4	Continuation of the discussion
Friday, 3 August	10 a.m. to 1 p.m. and 3 to 6 p.m.	4	Continuation and conclusion of the discussion
		5	Conclusions and recommendations and adoption of the report of the Meeting

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Vienna, 30 July-3 August 2001

Annotated provisional agenda and proposed organization of work

Corrigendum

Annotations, item 4, documentation, second and third lines

For (E/CN.15/2001/3 and Corr.1 and Add.1) *read* (E/CN.15/2001/3 and Corr.1)

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Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption
Vienna, 30 July-3 August 2001

Report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption

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I. Introduction

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime[1] was desirable; decided to begin the elaboration of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention; requested the Secretary-General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, at its tenth session, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

2. In the same resolution, the General Assembly requested the Secretary-General to convene, upon completion of the negotiation of the United Nations Convention against Transnational Organized Crime and the related protocols, an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.

3. In its resolution 55/188 of 20 December 2000, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the return of such funds to the countries of origin.

4. The Economic and Social Council, upon the recommendation of the Commission on Crime Prevention and Criminal Justice at its tenth session, adopted resolution 2001/... of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds". In that resolution, the Council requested the intergovernmental open-ended expert group referred to in General Assembly resolution 55/61 to consider, within the context of its mandates, the following issues, inter alia, as possible items of work to be included in the draft terms of reference for the negotiation of a future legal instrument against corruption: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contribute to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering; and (d) determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

II. Matters calling for action by the General Assembly

5. Pursuant to General Assembly resolution 55/61, the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption brings to the attention of the General Assembly at its fifty-sixth session, through the Commission on Crime Prevention and Criminal Justice at its reconvened tenth session and the Economic and Social Council, the following draft resolution for its consideration and action:

Terms of reference for the negotiation of the United Nations convention against corruption

The General Assembly,

Concerned about the seriousness of problems posed by corruption, which may endanger the stability

[1] General Assembly resolution 55/25, annex.

and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Recalling its resolution 51/59 of 12 December 1996, by which it adopted the International Code of Conduct for Public Officials, recommending the Code to Member States as a tool to guide their efforts against corruption,

Recalling also its resolution 51/191 of 12 December 1996, by which it adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions,

Recalling further its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption, and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument,

Recalling its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the country of origin,

Recalling also Economic and Social Council resolution 2001/..., entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds",[2]

Reiterating the need to prepare a broad and effective international legal instrument against corruption,

Taking note of the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption,[3] submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session and before the meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption,

1. *Takes note with appreciation* of the report of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, which met in Vienna from 30 July to 3 August 2001,[4] as endorsed by the Commission on Crime Prevention and Criminal Justice at its resumed tenth session and by the Economic and Social Council;

2. *Decides* that the ad hoc committee established pursuant to General Assembly resolution 55/61 shall negotiate a broad and effective convention, which, subject to the final determination of its title, shall be referred to as the "United Nations Convention against Corruption";

3. *Requests* the ad hoc committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation;

4. *Invites* the ad hoc committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption,[3] as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session,[2] and in particular on paragraph 1 of Economic and Social Council resolution 2001/... as resource materials in the accomplishment of its tasks;

5. *Requests* the ad hoc committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime;[1]

6. *Decides* that the ad hoc committee shall be convened in Vienna in 2002 and 2003, as required, and

[2] See E/2001/30 and Corr.1, chap. I, sect. B.III.

[3] E/CN.15/2001/3 and Corr.1.

[4] A/AC.260/2.

shall hold no fewer than three sessions of two weeks each per year, within the overall approved appropriations of the programme budget for the biennium 2002-2003, according to a schedule to be drawn up by its bureau, and requests the ad hoc committee to complete its work by the end of 2003;

7. *Also decides* that the bureau of the ad hoc committee shall be elected by the committee itself and shall consist of two representatives from each of the five regional groups;

8. *Invites* donor countries to assist the United Nations in ensuring the full and effective participation of developing countries, in particular least developed countries, in the work of the ad hoc committee, including by covering travel and local expenses;

9. *Urges* States to be fully involved in the negotiation of the convention and to endeavour to ensure continuity in their representation;

10. *Invites* the ad hoc committee to take into consideration the contributions of non-governmental organizations and civil society, in accordance with United Nations rules and following the practice established by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime;

11. *Accepts with gratitude* the offer of the Government of Argentina to host an informal preparatory meeting of the ad hoc committee established pursuant to resolution 55/61, prior to its first session;

12. *Requests* the ad hoc committee to submit progress reports on its work to the Commission on Crime Prevention and Criminal Justice at its eleventh and twelfth sessions, in 2002 and 2003, respectively;

13. *Requests* the Secretary-General to provide the ad hoc committee with the necessary facilities and resources to support its work.

III. Organization of the meeting

A. Opening of the meeting

6. The Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001. The Intergovernmental Open-Ended Expert Group held five plenary meetings and four informal consultations.

7. Following the election of officers (see para. 10), the Chairman invited the Executive Director of the Office for Drug Control and Crime Prevention of the Secretariat to make an opening statement.

8. In his opening statement, the Executive Director of the Office for Drug Control and Crime Prevention stated that corruption was a phenomenon that dated from the very beginnings of organized human society. Corruption was as much a reality in industrialized countries as in countries with economies in transition and developing countries. While in recent times the number of cases of large-scale corruption had been growing, large-scale theft of public money was not the only form of corruption. Millions of people lived in places where they were obliged to pay bribes to obtain services that were considered a right under the law. Over time, corrupt practices reinforced poverty by making services available only to those who could afford them. Over the past 10 years, public resistance had begun to solidify against the more outrageous forms of corruption and political consensus to form, along with a deeper understanding of the links between corruption and poverty. The International Code of Conduct for Public Officials and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, adopted by the General Assembly in 1996 (see resolutions 51/59 and 51/191, respectively), as well as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development (OECD) on 21 November 1997, and other regional initiatives were proof of the shift in political consensus and public opinion. Political consensus, development policy and public opinion had converged around the demand that the law must apply to everyone. There was general agreement that corruption must be approached simultaneously from several sides. The spirit that had made possible the finalization of the United Nations Convention against Transnational Organized Crime was a solid basis for the development of a new global instrument that could propel the international community one important step further in the dynamic process of changing corruption from the secret that everyone knew about into the

public enemy that the international community was determined to defeat.

B. Attendance

9. The Meeting of the Intergovernmental Open-Ended Expert Group was attended by representatives of 97 States. Also attending the Meeting were observers for organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations. A list of participants is contained in annex I to the present report.

C. Election of officers

10. The Meeting elected the following officers by acclamation:

Chairman: T. P. Sreenivasan (India)

Vice-Chairmen: Olga Pellicer Silva (Mexico)
Abdulkadir Bin Rimdap (Nigeria)
Cedric Janssens de Bisthoven (Belgium)

Rapporteur: Anna Grupinska (Poland)

D. Adoption of the agenda and organization of work

11. At its first meeting, on 30 July 2001, the Intergovernmental Open-Ended Expert Group adopted the following agenda:

1. Opening of the Meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Preparation of draft terms of reference for the negotiation of an international legal instrument against corruption.
5. Conclusions and recommendations and adoption of the report of the Meeting.

E. Documentation

12. A list of documents is contained in annex II to the present report.

IV. Summary of the discussion

13. Turning the attention of the Intergovernmental Open-Ended Expert Group to item 4 of its agenda, the Chairman suggested that the draft terms of reference the Expert Group had been mandated to prepare should achieve the following two objectives: (a) to provide organizational guidance that would ensure a successful negotiating process, giving the Ad Hoc Committee for the Negotiation of an International Legal Instrument against Corruption, established pursuant to General Assembly resolution 55/61, sufficient flexibility to fulfil its tasks, while enabling the Secretariat to service it in an efficient manner; and (b) to provide a workable and flexible framework that would guide the Ad Hoc Committee in developing the new international legal instrument, taking into account the views and concerns of all States. In order to achieve those objectives, the Chairman proposed that the Expert Group first hear the statements of the representatives of regional groups and then conduct a general discussion. Upon completion of that general discussion, the Chairman intended, in consultation with the members of the Bureau, to summarize the main elements of the draft terms of reference in a draft resolution, which he would submit to the Expert Group for consideration and action.

14. The representative of Egypt, speaking on behalf of the Group of 77 and China, stressed the great importance attached by the members of the Group of 77 and China to the development of an effective and binding international legal instrument against corruption in order to tackle corruption more effectively and efficiently as well as to help Member States in building integrity to prevent and fight corruption and to face the challenges posed by transnational corruption. The terms of reference for the future legal instrument should include, inter alia, broad definitions, including all aspects relating to public and private corruption; a broad scope of application; a set of preventive measures; a chapter on criminalization of acts of corruption; and a chapter on mutual legal assistance and cooperation that would foster international cooperation exchange of information that would

facilitate tracing of funds and transfer of funds of illicit origin connected with corruption in order to ensure the repatriation of those funds, forfeiture and confiscation of the proceeds from corruption and the possibility of shifting the burden of proof and banking secrecy, and the rendering of technical assistance, especially to developing countries. An international follow-up mechanism should be considered to ensure implementation of those initiatives. The Group of 77 and China were of the view that the Bureau of the Ad Hoc Committee should be elected by the Committee itself in such a way as to ensure equitable regional representation and that the Ad Hoc Committee should complete its work in 2003.

15. The representative of Uruguay, speaking on behalf of the Group of Latin American and Caribbean States, confirmed the commitment of the members of the Group to participate actively in the fight against corruption and stressed the need to codify and strengthen international rules against the phenomenon in order to ensure transparency in both the public and the private sector. The members of the Group expressed the view that the instrument referred to in General Assembly resolution 55/61 should be an independent, binding instrument, which should have the form of a convention. While leaving to the Ad Hoc Committee established pursuant to resolution 55/61 the substantive discussion on the theoretical and practical aspects of the convention, the members of the Group were of the view that the Expert Group should identify the basic framework to guide the work of the Ad Hoc Committee. In that connection, the following elements were identified by the members of the Group for possible inclusion in the new convention: definitions, which should include aspects related to the definition of civil servants as well as to the concept of public service and corporate activities related to it; effective measures for the prevention, control and fight against corruption in both the public and private sector, including the involvement of civil society, the training of civil servants, the establishment of mechanisms to protect so-called "whistle-blowers" and the establishment of national independent anti-corruption bodies; scope of application; criminalization, which should include transnational bribery, illicit enrichment and laundering of the proceeds of corruption; liability of legal and natural persons; international cooperation, including exchange of information, training, extradition and mutual legal assistance; measures to prevent and fight the transfer of funds of illicit origin and the laundering of proceeds derived from corruption activities, as well as measures to facilitate the repatriation of such funds; technical assistance; and the establishment of a multilateral mechanism to monitor the application of the convention.

16. The representative of Belgium addressed the Expert Group on behalf of the States members of the European Union. Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Poland, Slovakia and Turkey also associated themselves with the statement. The representative of Belgium made reference to the Final Declaration of the Second Global Forum on Fighting Corruption and Safeguarding Integrity, held in The Hague, from 28 to 31 May 2001, which contained important elements for the work of the Expert Group, as well as to the different instruments developed within the framework of the European Union, as they could provide expertise in the development of a global strategy against corruption. The members of the European Union emphasized that the new instrument should set high global standards and should be compatible with the principles of existing anti-corruption instruments. The members of the Union underlined that as many countries as possible should be able to subscribe to the commitment to be expressed in the new instrument and that there should be an open dialogue among countries during the negotiation process, paying particular attention to the concerns of developing countries and countries with economies in transition. The States members of the European Union expressed the view that the new instrument could be nothing else but a convention, should contain both preventive and enforcement measures and follow a multidisciplinary approach. In addition, the following main elements were identified for possible inclusion in the new instrument: criminalization; prevention; technical assistance; and a monitoring mechanism. Regarding criminalization, reference was made to the instruments developed by the Council of Europe, the European Union and OECD. The new instrument should follow a broad and flexible approach and cover active and passive corruption in the public sector, of both national and foreign civil servants, including international civil servants. Likewise, the mandate of the ad hoc committee should include discussion of active and passive corruption in the private sector, as well as other offences connected to corruption. The new instrument should address laundering of the

proceeds of corruption and their seizure and confiscation as well as international cooperation in that regard. The provisions of the United Nations Convention against Transnational Organized Crime represented a good example to follow. The question of the return of funds of illicit origin should also be addressed in an effective and satisfactory manner. The European Union stressed that criminalization and sanction models should respect human rights and fundamental freedoms. Regarding prevention, the European Union was of the view that preventive measures were necessary to develop a global strategy against corruption and that they should be based on fundamental principles, such as good governance, integrity and transparency. The European Union considered it important also to include mechanisms to provide technical assistance to developing countries and countries with economies in transition, as well as the establishment of a monitoring mechanism, which should be based on the equality of obligations and be effective and flexible.

17. The representative of Morocco, speaking on behalf of the Group of African States, stated that there was consensus in the international community that urgent and serious action against corruption must be taken, at both the national and the international level. According to the Group, the future instrument against corruption should be independent, comprehensive and internationally binding. The purpose and scope of the instrument would make it possible to launch an effective fight against all forms of corruption, at the national and international levels, with prevention, detection, investigation, punishment and eradication of corruption; and to identify means to facilitate and regulate cooperation between States for the attainment of the objectives of the instrument. Its scope of application should include all forms of corruption. The definitions should address the concept of corruption in the broadest sense possible. The representative of Morocco stressed that prevention and law enforcement were equally crucial elements in the fight against corruption and should be reflected in the future legal instrument. Penal sanctions should be supplemented by disciplinary, administrative and civil law sanctions. The Group of African States also stressed the need to strengthen cooperation between law enforcement agencies, the reinforcement of mutual legal assistance and the bridging of differences in legal systems. In addition, the future instrument should contain provisions on money-laundering and on the return of the proceeds of corruption and illegally transferred funds. The Group of African States requested the Ad Hoc Committee to complete its work not later than 2003.

18. The representative of Jordan, speaking on behalf of the Group of Asian and Pacific States, endorsed the statement made by the representative of Egypt on behalf of the Group of 77 and China and expressed deep concern about the spread of corruption, which undermined society and its development, affecting in particular the poor. The members of the Group of Asian and Pacific States affirmed that they attach great importance to the development of the future international legal instrument against corruption and that they believed that the outcome of the Expert Group Meeting would play a central role in laying down the parameters for the development of an effective, credible, independent and binding instrument. According to the members of the Group, there should be a clear definition of corruption that covered both the private and public sectors and that the process of drafting the new instrument should be driven by the same considerations that had characterized the negotiations of the United Nations Convention against Transnational Organized Crime. The Group believed that the primary aim of the new convention should be to foster international cooperation. However, particular care should be taken that the integrity of domestic legal systems was not compromised. The Group believed that the scope of application of the new convention must be responsive to the concerns of all States, particularly on the sensitive issue of sovereign equality, territorial integrity and non-interference in the domestic affairs of States.

19. The representative of Japan stated that his country could not fully associate itself with the statement made by the representative of Jordan on behalf of the Group of Asian and Pacific States, insofar as that representative had endorsed the statement of the representative of Egypt on behalf of the Group of 77 and China.

20. In order to facilitate the work of the Expert Group, the Chairman, following consultations with the members of the Bureau, proposed that the discussion be structured along the following lines: (a) nature of the international legal instrument against corruption; (b) matters pertaining to the content of the new

instrument, for possible consideration by the Ad Hoc Committee; and (c) matters pertaining to the procedure to be followed for the negotiation process.

21. During the discussion that ensued, consensus emerged on the fact that the instrument should be a convention and numerous speakers supported the proposal that its title should be "United Nations Convention against Corruption". Some delegations felt that the title should contain some reference to the concepts of safeguarding integrity and promoting good governance.

22. Several delegations pointed out that key principles constituting the rationale and philosophical basis of the new draft convention should be enunciated, perhaps in a preamble.

23. Other delegations stressed the usefulness of not excluding the possibility that there might eventually be an annex or protocol to the new convention, which could include, for example, a code of conduct or code of ethics, that would apply, inter alia, to public officials. Some other delegations questioned whether the group of experts should be suggesting an annex or protocol at the current stage. According to some delegations, another issue that would need to be considered was the relationship of the new convention to existing conventions.

24. Some delegations pointed out that the new convention should be developed with full respect for the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States and with appreciation for differing legal systems.

25. It was pointed out that the new convention should be developed taking into account existing international legal instruments against corruption in order to ensure consistency and avoid unnecessary duplication. It was deemed important to ensure that the new convention would build on the achievements of those instruments and not set lower standards. Further, it was pointed out that the United Nations Convention against Transnational Organized Crime contained many provisions that encompassed useful solutions and represented significant achievements, reached by consensus. To the extent appropriate, the new convention should make full use of those provisions in order to facilitate and expedite the process of negotiation.

26. As regards the possible content of the new convention, there was general agreement that the Expert Group should be mindful of its mandate, which was to prepare draft terms of reference for the negotiation of the new convention. In that connection, there was consensus that it was essential to ensure that the ad hoc committee established pursuant to General Assembly resolution 55/61 be vested with maximum flexibility, as a key condition for the successful fulfilment of its assigned tasks. With that in mind and assisted by an informal discussion paper submitted to it by the Chairman in consultation with the other members of the Bureau, the Expert Group focused its discussion on a number of elements for consideration by the ad hoc committee. Those elements were definitions; scope; criminalization; prevention; sanctions; confiscation and seizure; international cooperation, including extradition, mutual legal assistance and law enforcement cooperation and exchange of information; technical assistance; transfer of funds of illicit origin and return of such funds; and mechanisms for monitoring implementation. The Expert Group felt that the list of elements should include jurisdiction, liability of legal persons, collection, exchange and analysis of information and protection of witnesses and victims. There was general agreement that the list was not intended to be exhaustive and that the final determination of which elements would be discussed and in what form was incumbent upon the ad hoc committee, which was the body mandated by the General Assembly to negotiate the new convention.

27. Some delegations were of the view that the new convention should be a broad-based instrument encompassing all forms of corruption. In particular, some delegations made reference to the need to cover public and private, active and passive corruption, trafficking in influence, international bribery, improper use of state property, obstruction of justice and abuse of power. According to some other delegations, the new convention should apply to domestic, foreign and international civil servants, as well as to politicians. Some other delegations expressed the view that there should be a definition of those performing a "public function", to whom the new convention should also extend. Other delegations advised caution, because attempting to broaden the approach excessively was fraught with many conceptual, legal and policy-related difficulties. That discussion notwithstanding, there was broad support for a comprehensive and multidisciplinary approach in developing the new convention.

28. Some delegations stressed the importance of including civil and administrative law measures in addition to criminal provisions. They considered that such an approach would provide a higher probability of efficiency and effectiveness, because of the multifaceted nature of corruption and the need to address those issues under diverse legal systems. In that connection, some delegations made reference to the need to include in the new convention civil and criminal liability, remedies and sanctions, in addition to relevant preventive measures. In the view of some delegations, criminal law measures against corruption would need to include the reversal of the burden of proof and the lifting of bank secrecy. According to other delegations, criminalization of illicit enrichment was also necessary. Other delegations voiced concern regarding the reversal of the onus of proof, as that would run contrary to constitutional principles or international obligations and would thus be difficult to envisage.

29. It was the general view of the Expert Group that prevention should be an important element of the new convention. It was therefore essential to strike a balance between prevention and enforcement measures in developing the new instrument. Prevention was perceived by some delegations as including the promotion of integrity, transparency and good governance. Specific preventive measures could include development of codes of conduct or ethics, an effective and impartial civil service, effective systems for financing political parties, establishment of independent oversight bodies, free and transparent media, transparent public procurement rules, effective regulation of financial systems, denial of tax deductibility of bribes, an independent judiciary and the effective implementation of the rule of law. In that context, some delegations, however, stressed the point that in that area the group should not duplicate the work already done by United Nations institutions and other international organizations of a global nature (e.g., the World Trade Organization or the World Bank). Many delegations expressed the view that, in order to be effective, prevention should address the social and economic factors that were associated with corruption. Many delegations also stressed the importance of both the involvement and participation of civil society in preventing corruption and the promotion of public awareness. In that connection, the view was expressed that the ad hoc committee should take into account the contributions of non-governmental organizations, as well as those of national and regional auditing bodies.

30. Many delegations deemed it essential that the new convention effectively address the question of the transfer of funds or assets of illicit origin derived from acts of corruption and the need to develop adequate measures to ensure the return of such funds or assets. Some delegations were of the view that, in that connection, the question of identification of the legitimate beneficiary of funds or assets of illicit origin, as well as the question of title over those funds or assets would need to be addressed. Extensive reference was made to Economic and Social Council resolution 2001/..., which constituted a useful basis for the deliberations of the ad hoc committee on the matter.

31. Many delegations emphasized the importance of effective mechanisms for monitoring the implementation of the new convention. For some delegations those mechanisms should be regional or multilateral. According to those delegations, several existing international legal instruments provided useful sources of inspiration in that regard. Other delegations expressed concern regarding the appropriateness of regional and multilateral mechanisms, as they had a bearing on sovereignty matters, and preferred national monitoring mechanisms.

32. The Expert Group also discussed matters pertaining to the organization of the negotiation process. There was general agreement that the ad hoc committee should elect its own bureau, which should be composed of two representatives of each of the five regional groups. There was also general agreement that the new convention should be concluded by the end of 2003. Regarding the number and duration of the sessions of the ad hoc committee, the views expressed ranged from two to six sessions of one or two weeks each per year. On the recommendation of the Chairman, the Expert Group agreed that the ad hoc committee should meet as required, holding no fewer than three sessions of two weeks each per year.

33. The Expert Group placed particular emphasis on the need for the broadest possible participation of countries in the work of the ad hoc committee. The Expert Group was therefore of the view that, following the practice of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, donor countries should be called upon to make resources available to the United Nations

to cover the cost of participation of developing countries, in particular least developed countries, including local expenses.

V. Presentation on the Global Programme against Corruption

34. Representatives of the Global Programme against Corruption presented to the Expert Group a 40-minute overview of the activities of the Global Programme, as the meeting was an ideal opportunity to brief such an expert audience on the Programme and its ability to provide technical assistance to Member States. The representatives described the overall objective of the Global Programme against Corruption, its focus, integrated approach and current initiatives, and outlined some of the key lessons learned.

35. Several delegations offered comments and posed questions on the Global Programme and made positive remarks about the actions undertaken against corruption by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat. Topics included judicial corruption, accountability, reversal of the burden of proof, empowerment of victims, corporate corruption and causes of corruption. Many delegates welcomed the development of an anti-corruption tool kit and suggested that new tools should be developed to address areas such as ethics, education of youth, civil service reform and asset recovery. Other delegations stressed that there was no single model of a system to fight corruption and that the inception and implementation of appropriate measures should take into account the diversity of legal systems and traditions of States.

VI. Informal consultations

36. In agreement with the members of the Bureau, the Chairman of the Meeting decided to hold informal consultations under the Chairmanship of Ambassador Abdulkadir Bin Rimdap (Nigeria), Vice-Chairman. The Expert Group held four informal consultations. The main purpose of the consultations was to finalize a draft resolution proposed by the Chairman, entitled "Terms of reference for the negotiation of a United Nations convention against corruption". The consultations focused attention on discussing the various elements to be considered by the ad hoc committee for inclusion in the draft convention.

37. The consultations also dealt with organizational and procedural matters, including the number and duration of future sessions of the ad hoc committee and the composition of its Bureau, as well as participation of States and non-governmental organizations in those sessions. The consultations led to agreement on a consensus text, which was submitted to the Expert Group for consideration and action.

VII. Adoption of the report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption

38. At its fifth meeting, on 3 August 2001, the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption adopted the draft resolution contained in chapter II of the present report and decided to submit it to the General Assembly at its fifty-sixth session, through the Commission on Crime Prevention and Criminal Justice at its reconvened tenth session and the Economic and Social Council, for adoption in accordance with General Assembly resolution 55/61.

39. The representative of the Netherlands stated that his delegation had accepted the text of operative paragraph 5 of the draft resolution on the understanding that it would not prevent the ad hoc committee established pursuant to General Assembly resolution 55/61 from being inspired by any other relevant instruments and documents addressing corruption.

40. The representative of Croatia associated himself with the statement made by the representative of the Netherlands. He also stated that his delegation understood the term "multidisciplinary approach", contained in paragraph 3 of the draft resolution, to include criminal, civil and administrative law aspects.

41. The representative of the United States stated that the divergence in the understanding of the term "multidisciplinary approach" underscored the need to take into account differences in legal systems. Her delegation understood it to signify not only criminalization measures, but also a wide range of preventive measures involved in such a complex subject matter.

42. The representative of Nigeria stated that the protection of sovereignty referred to in paragraph 3 of the draft resolution should not be understood or used in a way that would impede the efforts of countries seeking to recover illicit assets.

43. The representative of Cameroon associated himself with the statement made by the representative of Nigeria and added that domestic legislation should not function as an impediment to the efforts of countries seeking to recover illicit assets, because that would defeat the objective of strengthening international cooperation.

44. The Chairman concluded by acknowledging with gratitude the offer of the Government of Argentina to act as host of an informal preparatory meeting of the ad hoc committee prior to its first session.

45. Also at its fifth meeting, the Intergovernmental Open-Ended Expert Group adopted the report on its Meeting (A/AC.260/L.1 and Add.1/Rev.1 and Add.2).

Annex I

List of participants

States

Algeria	Lazhar Soualem, Linda Briza
Angola	Fidelino Loy de Jesus Figueiredo, Julio Helder Moura Lucas, Antonio Felismino, Astrigildo Culolo, Valmiro da Cruz Verdades
Argentina	Juan de Lezica, Ricardo Arredondo, Beatriz Vivas de Lezica, Nicolas Raigorodsky
Armenia	Vartuhi Khechoyan
Australia	Maggie Jackson, Helen Stylianou
Austria	Thomas Stelzer, Johann Fröhlich, Wolfgang Spadinger, Michael Postl, Irene Gartner, Johann Haller, Paul Jauernig, Doris Buchner
Azerbaijan	Vaqif Sadiqov, Afet Mikayilov, Rauf Rzayev, Rashad Abdullayev
Belarus	Stepan Kosukha, Viktar Gaisenak, Olga Zvereva
Belgium	Michel Adam, Cedric Janssens de Bisthoven, Rudi Troosters, Vicky De Souter, Wouter Boucique
Bolivia	Jaime Niño de Guzmán, Marco Alandia Navajas, Miriam Siles Crespo
Bosnia and Herzegovina	Emina Keco-Isakovic, Hasib Salkic
Brazil	Sergio de Queiroz Duarte, Ivete Lund Viegas, Gustavo Henrique Righi Ivahy Badaró
Bulgaria	Traiko Spasov
Burkina Faso	Mamadou Serme, Thomas Sanon, Lazare Gansore, Ousmane Traore, Augustin Salambanga
Cameroon	Egbe Achuo Hillman, Helen Galega Nee Feh
Canada	Keith Morrill, Doug Breithaupt, Joan Fisher, Yvan Roy
Chile	Raimundo González Aninat, Clara Szczaranski Cerda, Raul Elgueta González, Luis Plaza Gentina, Miguel Angel Peñailillo, Xavier Armendariz Salamero
China	Wang Xiaodu, Liu Yinghai, Diao Mingsheng, Hu Bin, Guo Yang, Bai Ping, Tan Huanmin, Li Xin
Colombia	Héctor Charry Samper, Carlos Eduardo Mejia Escobar, Lorenzo Calderon Jaramillo, Hugo Penafort Sarmiento, Carlos Rodriguez Bocanegra, Diana Patricia Mejia Molina, Juliana Bustamante
Côte d'Ivoire	Bakassa Bakayoko
Croatia	Zeljko Horvatic

Cuba	Pablo Rodriguez Vidal, Fernando del Pino
Cyprus	Nicolaos D. Macris, Antonios Theocharous, Amalia Macris
Czech Republic	Karel Backovsky, Martin Linhart
Denmark	Lise Lauridsen
Ecuador	Patricio Palacios Cevallos, Juan Holguín
Egypt	Sameh Shoukry, Iskandr Ghattas, Soliman Abdel Moneim, Yasser El-Atawi, Mohsen El-Yamani
Estonia	Katri Teedumäe
Ethiopia	Waktasu Negeri, Kifle Getachew
Finland	Tom Grönberg, Matti Joutsen, Jaakko Juhani Halttunen, Antti Kaski
France	Bérengère Quincy, Michèle Ramis-Plum, Michel Gauthier, Eric Ruelle, Claudine Jacob, Delphine Lida, Daniel Jacqueme
Germany	Hans-Peter Plischka, Manfred Moehrenschlager, Uta Von Kiedrowski
Greece	Ekaterini Fountoulaki
Guatemala	Federico Urruela Prado
Hungary	László Gál, Károly Bárd, Sándor Virág, Ákos Kara, Attila Zsigmond, János Kormos, Henriett Nagy
India	Deepa Krishan, P. K. Choudhary, T. P. Sreenivasan, Hemant Karkare
Indonesia	Sapartini S. Kuntjoro Jakti, Haris Nugroho, Odo Rene Mathew Manuhutu
Iran (Islamic Republic of)	Fariborz Bakhtiari-Asl, Ali Hajigholam Saryazdi
Iraq	Janan Faris
Italy	Loretta Loria, Gioacchino Polimeni, Roberta Barberini, Ennio Di Francesco, Gualtiero Michelini
Japan	Nobuyasu Abe, Haruki Sugiyama, Hirokazu Urata, Sue Takasu, Kenzo Koide, Kiyo Kudo, Kenju Murakami, Jiro Usui, Nobuoki Ishii
Jordan	Muhyieddeen Touq, Jamal Al-Shamayleh, Sabah Al-Rafie
Kazakhstan	Yerzhan Birtanov
Kenya	Michael D. Kinyanjui, Florence T. Ochieng
Kuwait	Hamed Al-Othman, Salah Ben-Ali, Zakaria Alansari, Jasem Al-Budaiwi, Hanadi A.N. Abdulrahmen, Abdullatif Ahmed
Lebanon	Samir Chamma, Pierre Kanaan, Caroline Ziade

Libyan Arab Jamahiriya	Ahmed Abdussalam Abubaker, Mohamed Sherbak, Nureddin Mohamed Aljalidy, Faisal Elshaeri
Liechtenstein	Helmut Neudorfer, Lothar Hagen
Lithuania	Jurga Kasputiene
Luxembourg	Georges Santer, Pierre Franck
Malaysia	Zulkipli Mat Noor, Hussein Haniff, Nur Aini Zulkiflee, Ahmad Anwar Adnan, Shariffah Norhana Syed Mustaffa, Azailiza Mohd Ahad
Mali	Christian Idrissa Diassana, Sidi Mody Sidibe
Mauritius	Emmanuel Jean Leung Shing, Ivan Leslie Collendavelloo
Mexico	Olga Pellicer, Eréndira Paz Campos, Joel Hernandez Garcia, Raúl Carrera, Enrique Zepeda
Monaco	Ariane Picco-Margossain
Morocco	Tajeddine Baddou, Abdellatif Saadi
Mozambique	Fernando Manhiça, Zainadine Dalssuco
Namibia	Simon M. Maruta, Nada Kruger
Netherlands	Jan Peek, Jit Peters, Dennis De Jong, Michiel Bierkens
New Zealand	Joan Mosley, Nazla Carmine
Nicaragua	Alberto Altamirano Lacayo
Nigeria	A. B. Rimdap, G. M. Buba, A. A. Ayoko
Norway	Guro Hansson Bull, Marius Stub, Anne Brodtkorb, Helga Hernes, Kjetil Aasland
Oman	Said Nasser Al-Siyabi, Ahmed Said Al-Hasni, Said Nasser Al-Harthy
Pakistan	Ross Masud, Ahmer Bilal Soofi, Mohammad Kamran Akhtar
Peru	Javier Paulinich, Manuel Alvarez Espinal
Philippines	Victor G. Garcia III, Mary Anne A. Padua
Poland	Anna Grupinska, Mariusz Skowronski, Michal Plachta, Beata Ziorkiewicz, Jacek Garstka, Dominika Piwowarczyk
Portugal	Carlos Pais, Liliana Araújo, António Folgado
Qatar	Ahmed Mohammed Hamad Al-Tohaimi, Abdullah Saqar Ahmed Al-Mohannadi
Republic of Korea	Han Won-Jung, Paek Kee Bong
Romania	Constantin Narcis Craiu, Dan Constantin, Ioana Patriniche

Russian Federation	B. Shestakov, M. I. Kalinin, S. P. Bulavin, A. V. Prokoptchuk, I. L. Dimitrov, A. N. Okunev, P. A. Raskov, S. I. Tchyorny, V. V. Svinarev, V. A. Grobovoy, O. B. Rykov, Arkady Tonkoglas, V. Milovanov, A. V. Zinevitch, S. V. Zemskiy
Saudi Arabia	Omar Mohammed Kurdi, Abdulrahim Al-Ghamdi, Abdullah Al-Yousef, Mouhammed Al Mehizea, Hamad Al-Nathir, Saud Al-Mutlaq
Sierra Leone	Allieu Ibrahin Kanu
Slovakia	Vladimir Kotulic, Zuzana Chudá, Jan Malankevic, Marietta Sencáková, Jan Szabó
South Africa	A. T. Moleah, A. P. Rapea, R. Davids, S. V. Mancotywa
Spain	Antonio Nuñez García-Saúco, Ignacio Baylina Ruiz, José María De Las Cuevas Carretero, Francisco Javier González Ibañez, Clara Mapelli
Sri Lanka	Anil Moonesinghe, H. M. G. R. R. K. Wijeratne-Mendis
Sudan	Abdel Ghaffar A. Hassan, Salaheldin Abuzaid, Omer Ahmed Mohamed, Kamal Bashir Ahmed Mohamed Khair
Sweden	Hakan Öberg, Lina Pastorek
Switzerland	Ernst Gnägi, Dieter Cavalleri, Bernard Jaggy
Syrian Arab Republic	Safwan Ghanem, Abboud Al-Sarraj
Thailand	Karn Chiranond, Charnnarong Pakdewijit, Preecha Lertkamolmart, Thammanoon Ruengdit, Thanachot Pairoh, Wanchai Roujanavong
Togo	Solitoki Magnim Esso, Awoki Panassa
Tonga	Aisea H. Taumoepeau
Trinidad and Tobago	Debbie Sirjusingh
Turkey	A. Asim Arar, Abdullah Melih Kutlu, Mehmet Güzel, Aydin Özbay, A. Metin Eksi, Ziya Gökkaya, Oktay Üstün, Ömer Lütfü Yalcin
Ukraine	Anatoliy Redko, Victor Kryzhanivskyi, Igor Kusnir, Viktoria Kuvshynnykova
United Kingdom of Great Britain and Northern Ireland	John Freeman, Mark Etherton, Paul Stephenson, Phil Mason, Sharon Kinsley, David Lusher
United States of America	Elizabeth G. Verville, Mark Richard, Kathleen W. Barmon, John Brandolino, Joseph Gangloff, Thomas Heinemann, Jay Lerner, Herbert S. Traub, Jennifer Paprotna, Andrew Chen
Uruguay	Carlos Balsa, Gustavo Alvarez

Venezuela	Gustavo Márquez Marín, Adelina González, Miriam García de Pérez
Viet Nam	Nguyen Pham Kim Chi
Yemen	Hassan M. Makki, Nageeb Ismail Ali
Yugoslavia	Branislav Milinkovic, Vojin Ocokoljic
Zimbabwe	T. J. Kangai, V. A. Chikanda, B. Chimhandamba

United Nations Secretariat units

Coordinating Secretariat of the High-Level International Intergovernmental Event on Financing for Development (Department of Economic and Social Affairs)

United Nations bodies and institutes of the United Nations Crime Prevention and Criminal Justice Programme network

Naif Arab Academy for Security Sciences, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

Specialized agencies and other organizations of the United Nations system

United Nations Development Programme, Universal Postal Union

Other intergovernmental organizations

Commonwealth Secretariat, Council of Arab Ministers of the Interior, Council of the European Union, Economic Community of West African States, European Commission, European Police Office, League of Arab States, Offshore Group of Banking Supervisors, Organization for Security and Cooperation in Europe, Sovereign Military Order of Malta, Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

Non-governmental organizations

General consultative status

International Council of Women, Muslim World League, Soroptimist International

Special consultative status

International Council of Jewish Women, International Real Estate Federation, National Council of German Women's Organizations—Federal Union of Women's Organizations and Women's Groups of German Associations, Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students)

Annex II

List of documents before the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption

Document symbol	*Title or description*
E/CN.15/2001/3 and Corr. 1	Report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption
E/2001/30 and Corr. 1	Report of the Commission on Crime Prevention and Criminal Justice on its tenth session
E/1996/99	Letter dated 19 July 1996 from the Permanent Representative of Venezuela to the United Nations addressed to the Secretary-General, transmitting the text of the Inter-American Convention against Corruption
A/AC.260/1 and Corr.1	Annotated provisional agenda and proposed organization of work
A/AC.260/L.1 and Add.1/Rev.1 and Add.2	Draft report

United Nations A/AC.260/2/Corr.1

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Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption
Vienna, 30 July-3 August 2001

Report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption

Corrigendum

1. **Paragraph 4, first sentence**

   For resolution 2001/... *read* resolution 2001/13

2. **Paragraph 5, draft resolution**

   Sixth preambular paragraph

   For resolution 2001/... *read* resolution 2001/13 of 24 July 2001

   Operative paragraph 4

   For resolution 2001/... *read* resolution 2001/13

3. **Paragraph 16**

   For the existing text *substitute*

   16. The representative of Belgium, addressed the Expert Group on behalf of the States members of the European Union. Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Poland, Slovakia and Turkey also associated themselves with the statement. The representative of Belgium, after commending the United Nations Convention against Transnational Organized Crime and the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1), made reference to the Final Declaration of the Second Global Forum on Fighting Corruption and

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Safeguarding Integrity, held in The Hague from 28 to 31 May 2001, which contained important elements for the work of the Expert Group, as well as to the different instruments developed within the framework of the European Union, as they could provide expertise in the development of a global strategy against corruption. The members of the European Union emphasized that the new instrument should set high global standards and should be compatible with the principles of existing anti-corruption instruments. The members of the Union underlined that as many countries as possible should be able to subscribe to the commitment to be expressed in the new instrument and that there should be an open dialogue among countries during the negotiation process, paying particular attention to the concerns of developing countries and countries with the economies in transition. The States members of the European Union expressed the view that the new instrument could be nothing else but a convention, should contain both preventive and enforcement measures and follow a multidisciplinary approach. In addition, the following main elements were identified for possible inclusion in the new instrument: criminalization; prevention; technical assistance; and a monitoring mechanism. Regarding criminalization, reference was made to the instruments developed by the Council of Europe, the European Union and OECD. The new instrument should follow a broad and flexible approach and cover active and passive corruption in the public sector, of both national and foreign civil servants, including international civil servants. Likewise, the mandate of the ad hoc committee should include discussion of active and passive corruption in the private sector, as well as other offences connected to corruption. The new instrument should address laundering of the proceeds of corruption and their seizure and confiscation as well as international cooperation in that regard. The provisions of the United Nations Convention against Transnational Organized Crime represented a good example to follow. Its provisions on criminal law and procedure, such as penalties, protection of witnesses, responsibility of legal persons and international cooperation, could provide further guidance. The question of the return of funds of illicit origin should also be addressed in an effective and satisfactory manner. The European Union stressed that criminalization and sanction models should respect human rights and fundamental freedoms. Regarding prevention, the European Union was of the view that preventive measures were necessary to develop a global strategy against corruption and that they should be based on fundamental principles, such as good governance, integrity and transparency. They are of the highest importance in such matters as transparency of public procurement, international standards of auditing and accounts, prohibition of tax allowances, company law and codes of conduct. The European Union considered it important also to include mechanisms to provide technical assistance to developing countries and countries with economies in transition, as well as the establishment of a monitoring mechanism, which should be based on the equality of obligations and be effective and flexible. More specifically, the European Union could not accept criminalization models that were based on reversal of the burden of proof, which was contrary to the European Convention on Human Rights.